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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,521	12/20/2000	Paul Vegliante	2112-342 US	6443

7590

05/18/2004

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EXAMINER

HAMILTON, ISAAC N

ART UNIT	PAPER NUMBER
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3724

21

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/741,521

**Applicant(s)**

VEGLIANTE ET AL.

**Examiner**

Isaac N Hamilton

**Art Unit**

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Rejections made under 35 USC 112 are hereby withdrawn.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4-8, 11-16 and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Castelli (3,199,394). Castelli discloses rail base 13 and 14; pair of rails 26 and 27; channel 11, 28; blade housing 12; upper portion 31, 35; lower portion 29; blade 33; bottom edge of housing 35 in figure 5; first and second materials are not excluded from being the same material because the characteristics are the same; first and second materials can be the same material combined from different sources which is inherent in the manufacture of polymers; end surface at either end of bottom edge of housing 35 in figure 5; end surface is rounded and inclined upwardly in figure 5; lower portion slidably moving in the channel in column 3, lines 31-45; a charge is provided to the film because the rails are made of plasticized polyvinyl chloride, which inherently holds a charge that provides a clinging force. Evidence that polyvinyl chloride provides a charge and a clinging force is shown in sections 16.1-16.4 of Boston University's Physics web page. Regarding other claims note, polyvinyl chloride has a shore A hardness; PVC

Art Unit: 3724

is another name for polyvinyl chloride; the method of how the apparatus is made, such as extrusion or injection molding, does not further limit the structure; the term "plasticized" means that a material is flexible; PVC has a smooth surface and lubricity is provided by the smooth surface; the bottom edge of housing 35 is angled in figure 5; the blade 33 is angled at 30 degrees in figure 5; tracking device 29; tubular base 29; middle portion 32; channel 11 has a tubular shape; predetermined length of middle portion 32 in figure 4; end caps and bumper juxtaposed cover 16 and protrusions 18; the end caps act as a bumper for the tracking device because when the cover is closed, the cover 16 inherently reinforces the structure of the apparatus and stabilizes the apparatus every time the tracking device slams into the base 13, 14; depression 10; left section 31; right section 35; rivet 34, 36; aperture of blade around rivet 34, 36.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castelli in view of Chuang (4,960,022). Castelli discloses everything as noted above, but does not disclose a concave grip surface. However, Chuang teaches concave gripping surface 308. It would have been obvious to provide concave a concave gripping surface in Castelli as taught by Chuang in order to provide a comfortable surface for the user's finger while utilizing the apparatus.

Art Unit: 3724

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castelli in view of Larson (4,202,233). Castelli discloses everything as noted above, but does not disclose a housing made of acetal. However, Larson teaches housing 68 made of acetal in column 3, lines 35-49. It would have been obvious to provide a housing made of acetal in Castelli as taught by Larson in order to reduce sliding friction.

7. Regarding claim 17, Castelli discloses everything, and discloses male protrusions 18 attached to rail base 13 and 14; female receptacles juxtaposed cover 16 and protrusions 18. However, Castelli does not teach that the male protrusions are attached to the end cap. It would have been obvious to provide the protrusions on the end cap and the female receptacle on the rail base because a simple reversal of parts is an obvious design choice.

### ***Response to Arguments***

Applicant's arguments filed 02/02/2004 have been fully considered but they are not persuasive. Applicant asserts that Castelli does not disclose rails being formed of a material providing an attractive cling to plastic wrap. It is believed that the material in Castelli is the same material as the material defined in the claims. The limitations limit the material to plastic, rubber, vinyl, polyvinyl chloride, glass, silicon, metal and combinations thereof. Castelli has met this limitation, and although an attractive cling is not disclosed, it inherently has the same properties as the disclosed invention because there is no limitation differentiating the Castelli material and the materials in the instant application. Applicant asserts that Castelli does not disclose end caps attached to ends of the base rail, however, it is believed that end caps are the region of cover 16 that are directly adjacent to protrusions 18. The end caps are attached to ends

Art Unit: 3724

of the base rail 13, 14 via protrusions 18 which secure the cover in place to the base rail 13, 14. Applicant asserts that Castelli does not disclose that the end caps would release upon application of excessive force. It is believed that in the normal operation of the apparatus of Castelli, the cover 16 is applied with excessive force in order to remove the end caps from the restrictive force of the protrusions 18. In other words, a user must apply force to the cover 16 in order to open the cover and load/unload another roll of material, which is described in column 2, lines 9-12. Applicant asserts that Castelli does not disclose a slide cutter providing dual properties for both holding plastic wrap and strength of the rail. However, it is believed that the applicant used polyvinyl chloride (PVC) for both materials, which is disclosed in Castelli in column 1, lines 60-61.

***Rebuttal of 37 CFR 1.132 Declaration***

The declaration under 37 CFR 1.132 filed 02/02/2004 is insufficient to overcome the rejection of claims 1, 3-23, 35-44 based upon obviousness by Castelli and Chen in the 35 USC 103 rejection as set forth in the last Office action because: The declaration fails to show that the material in Castelli does not perform in the same manner as the material in the claim limitations. Although Castelli and Chen do not disclose the attractive cling property, the materials in Castelli and Chen are the same materials as the claim limitations. The declaration does not provide evidence that the materials in Castelli and Chen have different properties than the material in the instant application. With respect to applicant's statement of commercial success, the scope of the claims is not commensurate with the product being sold. The limitations are for an apparatus that has rails and a cutter; however, the product that the consumer purchases additionally

Art Unit: 3724

contains the plastic wrap and the box that contains the plastic wrap, rails and cutter.

Additionally, commercial success may have been attributable to extensive advertising and position as a market leader before the introduction of the instant invention. Moreover, gross sales figures do not show commercial success absent evidence as to market share.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 703-305-4949. The examiner can normally be reached on Monday thru Friday between 8am and 5pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

Application/Control Number: 09/741,521

Page 7

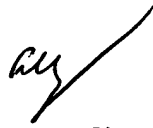
Art Unit: 3724

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

  
IH

May 17, 2004



Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700